

5. Defendant, PACS Industries, Inc. (“PACS NY”), is a corporation, organized and existing under the laws of the State of New York, with a last known principal place of business located at 1211 Stewart Avenue, Bethpage, New York 11714.

6. Upon information and belief, PACS NY and PACS Ohio are related corporate entities which formerly jointly operated under the identical name “PACS Industries, Inc.”. PACS NY and PACS Ohio are hereinafter referred to jointly as “the PACS Entities.”

B. JURISDICTION AND VENUE

7. Jurisdiction in this Court is proper pursuant to 28 U.S.C. §1332 since the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between parties which are citizens of different states.

8. Venue in this Court is proper pursuant to 28 U.S.C. §1391 since a substantial part of the events giving rise to the within claim occurred in this judicial district, and since all Defendants regularly transact business within this judicial district.

C. FACTUAL BACKGROUND

PACS Industries, Inc.’s Corporate Structure

9. The PACS Entities share common ownership, operational control and management, and conduct business as a single business entity. Upon information and belief, the PACS Entities, while still in existence, are largely defunct.

10. “PACS Industries, Inc.” was a manufacturer and supplier of electrical power distribution switchgear, large circuit breakers, and companion products.

11. The PACS Entities had offices in Bethpage, New York, and a manufacturing facility in Mt. Vernon, Ohio. The New York offices housed “PACS Industries, Inc.’s

engineering, marketing, and corporate management functions, while its manufacturing facility is located in Ohio.

12. The PACS Entities marketed their products worldwide under the business name of “PACS Industries, Inc.” as if it were a single unitary business entity.

**Ethos Purchases Circuit Breakers From PACS NY for Installation
in Israeli Power Plant**

13. Ethos provides a wide range of engineering, procurement, and construction services to support the developers of power plants or operators expanding the capacity of existing facilities. Ethos’ project teams deliver project-specific or turnkey gas turbine and thermal power generating solutions.

14. The services provided by Ethos include power plant planning and engineering, modeling and analysis, major equipment procurement, project and construction management, power plant start-up and commissioning, and performance testing.

15. On September 2, 2011, Ethos (then known as Wood Group) contracted with PACS NY for design, manufacture and delivery of twelve (12) generator circuit breakers (“the Circuit Breakers”) and related products and services for installation in the Dorad 800 MW Combined Cycle Power Plant being constructed by Plaintiff in Ashkelon, Israel (“Ashkelon Plant”) for its owner, Dorad Energy Limited (“Owner”).

16. A true and correct copy of the Equipment Purchase Contract between Ethos and PACS NY (“Contract”) is attached hereto as Exhibit “A” and incorporated herein by reference.

17. The total contract price for the Circuit Breakers and related products and services set forth in the Contract was \$2,289,984.00. Additional fees would be incurred by Ethos for other services provided by PACS, such as supervision for start-up and commissioning.

18. The Circuit Breakers were to be designed and constructed by PACS NY in strict accordance with the specifications and tolerances set forth in the Specification D-7051 entitled “Dorad 800 MW Combined Cycle Power Plant - Procurement Specification - Electrical - Gas Turbine Generator Circuit Breaker” (“Specifications”) which was included in the Contract. See Exhibit “A.”

19. Among the requirements set forth in the Specifications were that the Circuit Breakers were to operate below certain maximum heat tolerances.

20. Also pursuant to the Specifications, PACS NY was to conduct the necessary testing of the Circuit Breakers to verify conformance with the requirements of the Specification prior to shipment to the Ashkelon Plant.

21. Pursuant to the section of the Contract entitled “Appendix D - Special Terms and Conditions,” PACS NY agreed to provide a warranty for defects in the Circuit Breakers until December 31, 2014, and a warranty for latent defects in the Circuit Breakers until December 31, 2017. See Exhibit “A.”

22. In April 2012, the Circuit Breakers were made ready by PACS NY for shipment to the Ashkelon Plant from the PACS Ohio facility in Ohio.

PACS Industries, Inc. Becomes PACS Switchgear, LLC

23. Upon information and belief, in May 2014, unbeknownst to Ethos, PACS NY and PACS OH sold their assets to a newly-formed entity called PACS Switchgear, LLC.

24. According to PACS Switchgear’s corporate website at <http://www.pacsswitchgearllc.com/index.php/news-announcements>, the sale of assets was a “secured party sale...pursuant to N.Y. U.C.C Law § 9-610 and Ohio R.C. § 1309.610.”

25. Notwithstanding the sale of assets, PACS Switchgear continued to operate out of the same offices as PACS NY and PACS Ohio, utilized the same manufacturing facility, was managed by substantially the same personnel, utilized the same email addresses for a period of time, and utilized the same website URL for a period of time.

26. In essence, despite the change in corporate structure from PACS Ohio and PACS NY to PACS Switchgear, LLC, the PACS Entities' business operations continued on uninterrupted and largely unchanged.

27. While Ethos personnel were aware in 2014 of the fact that the PACS Entities were undergoing some corporate changes, and that it was evolving into a company known as PACS Switchgear, Ethos was never informed that PACS Switchgear would not honor the warranties or other terms in the Contract.

Circuit Breakers at Ashkelon Plant Begin Operating at Excessive Temperatures

28. In May of 2015, one of the Circuit Breakers at the Ashkelon Plant - GCB 13 - suffered an arc flash failure due to overheating.

29. As a result of the failure, the Plaintiff contacted PACS Switchgear directly shortly thereafter to perform an on-site inspection of the Circuit Breakers, to determine the cause of the failure, and to perform maintenance on all of the Circuit Breakers in an effort to remedy the overheating problem.

30. PACS Switchgear conducted an inspection of other switchgear after the failure of the Circuit Breaker which revealed that all of the other Circuit Breakers were operating at dangerously high temperatures and could possibly fail at any time.

31. The charges incurred by the Owner for the inspection by PACS Switchgear were forced to be paid for by Ethos under its agreement with the Owner. Furthermore, the Owner had to incur in further unplanned costs for maintenance repair services.

32. The Owner further asked PACS Switchgear to manufacture a new circuit breaker to replace the one that failed, another expense which had to be paid for by Ethos pursuant to its agreement with the Owner.

33. PACS Switchgear recommended that the Owner implement certain maintenance practices in an attempt to reduce the temperatures, but the recommendations failed to remedy the temperature problem.

PACS Switchgear Refuses to Honor Warranties

34. After the defects became evident, in an effort to solve the overheating problem, Ethos contacted and maintained an ongoing dialogue with PACS Switchgear personnel throughout 2015.

35. During these communications, PACS Switchgear first informed Ethos that it was a new company, that it had no relationship whatsoever to the PACS entities, and that it was not responsible for the overheating problems at the Ashkelon Plant.

36. PACS Switchgear further informed Ethos that it had no obligation to honor the warranties in the Contract, and that it would not do so.

37. Ethos ultimately determined that the Circuit Breakers supplied by PACS NY did not conform to the Specifications and contained a latent design defect which caused them to operate at an excessively and dangerously high temperature.

38. Ethos demanded the PACS NY and PACS Switchgear honor the warranty in the Contract, and replace or repair the Circuit Breakers at its own expense, but they have refused to do so.

39. As a result, Ethos has been forced at its own great expense to replace the Circuit Breakers at the Ashkelon Plant.

COUNT I - BREACH OF CONTRACT

ETHOS

vs.

***PACS INDUSTRIES, INC. (OHIO) and
PACS INDUSTRIES, INC. (NY)***

40. The averments of paragraphs 1 through 39 of this Complaint are incorporated herein by reference as if set forth at length.

41. The failure of PACS Ohio and/or PACS NY to design, manufacture, test, and deliver the Circuit Breakers in accordance with the Specifications is a material breach of the Contract between the parties.

42. The failure of PACS Ohio and/or PACS NY to deliver the Circuit Breakers without latent defects which caused them to operate at excessively high and dangerous temperatures is a material breach of the Contract between the parties.

43. The failure of PACS Ohio and/or PACS NY to honor the warranty provisions of the Contract, and repair or replace the Circuit Breakers at the Ashkelon Plant is a material breach of the contract between the parties.

44. Despite demands by Ethos that PACS Ohio and/or PACS NY honor its obligations under the Contract, they have refused to do so.

45. PACS Ohio and/or PACS NY have breached their contract with Ethos as set forth herein.

46. Ethos has suffered damages in the amount \$930,080.71 as a direct and proximate result of the aforementioned breaches of contract.

WHEREFORE, Plaintiff, EthosEnergy (GBR) Limited f/k/a Wood Group Gas Turbine Services, Ltd., demands judgment in its favor and against the Defendants, PACS Industries, Inc. (Ohio) and PACS Industries, Inc. (NY), in an amount in excess of \$75,000.00, together with interest, costs of suit, and any other relief which this Court deems just and owing.

COUNT II - BREACH OF CONTRACT (SUCCESSOR LIABILITY)

ETHOS

vs.

PACS SWITCHGEAR, LLC

47. The averments of paragraphs 1 through 46 of this Complaint are incorporated herein by reference as if set forth at length.

48. PACS LLC is the successor in interest to PACS NY and PACS Ohio and is therefore liable to Ethos for the aforementioned breaches of contract and warranty.

49. Specifically, upon information and belief, the corporate restructuring whereby PACS LLC acquired the assets of PACS Ohio and/or PACS NY amounts to *de facto* merger of the entities, and PACS LLC is therefore the successor in interest to PACS Ohio and/or PACS NY on the contract with Ethos.

50. In the alternative, upon information and belief, the corporate restructuring whereby PACS LLC acquired the assets of PACS Ohio and/or PACS NY is a mere continuation of the prior business operated by PACS Ohio and PACS NY, and PACS LLC is therefore the successor in interest to PACS Ohio and/or PACS NY on the contract with Ethos.

51. In the alternative, upon information and belief, the transfer of any assets, rights, liabilities, and interests between and among PACS Ohio, PACS NY, and PACS LLC was done without adequate consideration and with no provisions for creditors of PACS Ohio and PACS NY.

52. Upon information and belief, PACS LLC shares a continuity of ownership with the PACS Entities, has (or had) a substantial continuity of management and other personnel with the PACS Entities, operates from the same physical locations as the PACS Entities, and has continued the same general business operations without interruption.

53. As successor to PACS Ohio and/or PACS NY, PACS LLC's failure to honor the warranties entered into with Ethos is a material breach of the contract between the parties.

54. Ethos has suffered damages in the amount \$930,080.71 as a direct and proximate result of the aforementioned breaches of contract.

WHEREFORE, Plaintiff, EthosEnergy (GBR) Limited f/k/a Wood Group Gas Turbine Services, Ltd., demands judgment in its favor and against the Defendants, PACS Industries, Inc. (Ohio) and PACS Industries, Inc. (NY), in an amount in excess of \$75,000.00, together with interest, costs of suit, and any other relief which this Court deems just and owing.

JURY TRIAL DEMANDED

Respectfully submitted,

TUCKER ARENSBERG, P.C.

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